IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 595 of 1983

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KISHANLAL PREMJIBHAI DOSHI NOMINATED TRUSTEES OF DOSHI & 3 - Petitioner(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR PV HATHI for Petitioner No(s).: 1,2,3,4.
MR.PR ABICHANDANI, AGP, for Respondent No(s).: 1,2.

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CORAM :HON'BLE MR JUSTICE AKIL KURESHI

Date : 07/07/2005

ORAL JUDGMENT

Learned advocate for the petitioners does not press for the reliefs pertaining to challenge to the Constitutional validity of sub-clause (ddd) of section 3(1) of the Gujarat Agricultural Lands Ceiling Act, 1960

(hereinafter to be referred to as “the said Act”).

2. In the present petition, what is under challenge is the orders passed by the Collector, Bhavnagar on 30.11.76 as upheld by the State Government in the order dated 26.7.82.

3. The petitioners are trustees of one Doshi Banji Devji Trust which is a trust registered under the Bombay Public Trust Act. The trust holds certain agricultural lands which were admittedly enjoying exemption from the application of the provisions of the said Act prior to its amendment vide Amendment Act No.2/74. Under the provisions of section 3(1) of the said Act, as it stood prior to its amendment vide Amendment Act No.2/74, the agricultural lands held by the said trust were granted exemption. In fact, a certificate in this regard was issued by the Deputy Collector, Mahua on 8.6.63. The trust continued to enjoy the exemption from the provisions of the said Act with respect to these lands upto 1974 when the provisions of section 3 of the said Act were extensively amended. After the amendment in the said Act pursuant to the Amendment Act No.2/74, relevant provisions of section 3(1) of the said Act, for the purpose of deciding this petition, reads as follows:-

“3. (1) Subject to the provisions of sub-sections (1A) to (1D) (both inclusive), the following lands shall be exempted from the provisions of this Act that is to say --

xxxx xxxx

(dd) lands held by a Panjrapole or a Gaushala for the purpose of grazing of cattle or storage of grass for cattle in the institution to such extent as may be specified from time to time in each case by a Committee consisting of the Collector, such officer of Animal Husbandry Department as the Director of Animal Husbandry may nominate and a representative of the Panjrapole, or as the case may be, the Gaushala, having regard to the number of cattle normally maintained or cared for in the institution concerned, provided the Panjrapole or the Gaushala, as the case may be uses such lands solely and directly for the purpose of which such lands are held land not for the purpose for which such lands are held and not for the purpose of deriving income for the institution;

(ddd) lands being lands utilised for maintenance of Panjrapole or Gaushala, which were exempt from the provisions of this Act immediately before the specified date by reason of their being the property of an institution for public religious worship registered as a public trust under the Bombay Public Trusts Act, 1950, provided such institution creates a separate trust in respect of such lands for the purposes of Panjrapole or Gaushala applies within a period of ninety days from the specified date, for

> the registration of such trust under the said Act, to the Deputy or Assistant Charity Commissioner having jurisdiction and endeavours to get such separate trust registered under the said Act within a period of one year from the specified date."

Under a belief that as per the amended provisions of the said Act, the Trust is required to apply for and obtain certificate from the authorities, the petitioners applied for such exemption to the Collector by an application dated 10th August 1976. The Collector, however, by his impugned order dated 30th November 1976 found that the application of the Trust was beyond the period of 90 days provided under the said Act. It was also held that the objects of the Trust would not qualify the Trust for seeking such exemption. The State Government while disposing of the appeal of the Trust by its order dated 26.7.82 also held that the application was not made within the period of 90 days provided, that a separate Trust was not created as required and that the petitioner was not carrying on any religious activities and therefore exemption cannot be granted.

4. Learned advocate for the petitioner points out that the issues arising in the present petition are squarely covered by a decision of learned single Judge of this

Court in the case of Shri Ranpur Khoda Dhor Panjarapole v. State, 1995 (1) GLR 597. In the said decision, the learned single Judge was pleased to come to the conclusion that the Amendment Act No.2/74 is not retrospective in operation and the exemption granted earlier cannot be taken away. It was, further, held that if an application for exemption is made after the amendment, though earlier exemption was granted, such an application is meaningless and would not affect the rights of the petitioner. I find that the learned advocate for the petitioner is justified in placing reliance on the said decision in the case of Shri Ranpur Khoda Dhor Panjarapole (supra). The learned Judge while interpreting the very same provisions of section 3(1)(dd) and (ddd) of the said Act came to the conclusion that the earlier exemption would continue and the Amendment Act would not apply to such lands and a mistaken application by the petitioner for exemption under the amended provisions of the Act would not affect his rights. In the present case, though the application was made by the Trust seeking exemption which came to be rejected by the authorities, the fact which is not in dispute is that prior to the amendment in the said Act pursuant to the amending Act No.2/74, exemption was already granted to the Trust way back in the year 1963 from the operation of the provisions of the said Act

regarding certain specified agricultural lands. Such exemption had not come to an end by virtue of the amendment in the said Act and the application field by the petitioners was under a mistaken belief.

5. In the result, while allowing this petition, though it is not necessary to quash and set aside the impugned orders, since the same are passed on an application made by the Trust under mistaken belief, it is declared that the petitioners would continue to enjoy the exemption granted by the Deputy Collector, Mohua under certificate dated 8.7.63. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi,J.)

(vjn)